



# COMMONWEALTH of VIRGINIA

W. Tayloe Murphy, Jr.  
Secretary of Natural Resources

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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### STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO CARDINAL REALTY (VIRGINIA), LLC dba CARDINAL STONE-GALAX QUARRY VPDES GENERAL REGISTRATION STATEMENT NO. VAG840054

#### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d), between the State Water Control Board and Cardinal Realty (Virginia), LLC dba Cardinal Stone – Galax Quarry, for the purpose of resolving certain violations of the State Water Control Law and regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Special Order.
6. “Company” means Cardinal Realty (Virginia), LLC dba Cardinal Stone – Galax Quarry, certified to do business in Virginia and its affiliates, partners, subsidiaries and parents.

7. “Facility” means the stone quarry facility located at 1538 Edmonds Road, Galax, Virginia.
8. “SWRO” means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
9. “Permit” means the VPDES General Permit for Nonmetallic Mineral Mining. Coverage for this Facility is under Registration Statement No. VAG840054. The permit was reissued on July 1, 2004, and will expire on June 30, 2009. The Registration Statement was modified on September 26, 2005.
10. “O&M” means operation and maintenance.
11. “SWPPP” means stormwater pollution prevention plan.

**SECTION C: Findings of Facts and Conclusions of Law**

1. The Company operates a stone quarry facility in Galax, Virginia which is subject to the VPDES General Permit for Nonmetallic Mineral Mining, with coverage for this Facility being under Registration Statement No. VAG840054. The permit was reissued on July 1, 2004, and will expire on June 30, 2009. The Registration Statement was modified on September 26, 2005. The original Registration Statement authorized stormwater discharges from two outfalls, 001 and 002. These outfalls discharge to an unnamed tributary to Meadow Creek that originates at a large spring located on site.
2. Modification of the Registration Statement noted above was in response to submittal of updated materials received by DEQ on September 1, 2005. Included in the modification was the addition of Outfalls 003, 004, and 005, which discharge to a second, smaller unnamed tributary to Meadow Creek. Outfalls 003 and 004 include stormwater runoff from an area leased to Adams Construction Company, which began operation of an asphalt plant in May, 2005. Documentation received by DEQ indicates that both Adams Construction Company and Cardinal Realty (Virginia), LLC agree that operations at the Adams Construction Company’s Grayson Asphalt Plant will be subject to conditions of the VPDES General Permit for Nonmetallic Mineral Mining, and also the Registration Statement No. VAG840054, issued to Cardinal Realty (Virginia), LLC dba Cardinal Stone – Galax Quarry.
3. A site visit at the Facility was conducted by DEQ-SWRO staff on June 9, 2005. Issues noted during the site visit are discussed below.

4. Although the Facility had permitted outfalls 001 and 002 at the time of the inspection, staff identified other locations where material from the Facility was being lost into the stream (unnamed tributaries of Meadow Creek), from areas of uncontrolled sheet flow runoff. Also, the sediment basin at Outfall 001, and the sedimentation ponds at the stone washing operations were both in need of cleanup.
5. Although the Company had a stormwater pollution prevention plan (SWPPP), as required by Part II.D. of the Permit, apparently there had been a failure to properly apply the SWPPP to all areas of the operation. Proper operation and maintenance of all areas of activity would have precluded problems identified with the areas of uncontrolled sheet flow runoff. Proper operation and maintenance would also have prevented problems at the sedimentation basin at Outfall 001 and the sedimentation ponds at the stone washing operations.
6. DEQ staff biologists conducted a cursory benthic survey of the unnamed tributary to Meadow Creek that originates at a large spring located on site, and that receives discharges from outfalls 001 and 002, on July 20, 2005. Results of the survey indicated habitat impacts to the tributary due to sediment loss from quarry operations. Benthic life was found within the impacted stretch of the tributary. However, there was a reduction in the presence of sensitive organisms. A second, smaller tributary receives discharges from outfalls 003, 004, and 005 as noted above. A benthic survey was not conducted on this definitely intermittent stream. However, the presence of large amounts of sediment within the channel was noted during the June 9, 2005 site visit.
7. Part I.B.7. of the Permit states: Except as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.
8. Part II.H.3.d. of the Permit requires, at a minimum, quarterly inspections. A revised SWPPP was received by DEQ staff on August 29, 2005. The revised SWPPP submitted indicates that inspections will be conducted after each rainfall. Part II.H.4. of the Permit requires that a comprehensive site compliance evaluation be conducted by Facility personnel at a minimum frequency of once per year. Based upon the results of the comprehensive site compliance evaluation, the SWPPP should be revised as needed.
9. Per Part II.D. of the Permit, the Facility's SWPPP and all other plans incorporated by reference into the SWPPP become enforceable under the Permit.

10. Virginia Code § 62.1-44.5.A.1. and regulation 9 VAC 25-31-50 state that except in compliance with a certificate issued by the board, it shall be unlawful for any person to discharge into state waters sewage, industrial waste, other wastes, or any noxious or deleterious substances.
11. DEQ and Company officials met on June 28, 2005 to resolve the apparent violations. Company officials also accompanied DEQ staff during the benthic survey of the tributary to Meadow Creek on July 20, 2005.

#### **SECTION D: Agreement and Order**

Accordingly the Board, by virtue of the authority granted it pursuant to Va. Code § 62.1-44.15 (8a) and (8d), orders the Company, and the Company agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders the Company, and the Company voluntarily agrees to pay a civil charge of **\$7,500.00** within **30 days** of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check or money order payable to the “Treasurer of Virginia”, and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Either on a transmittal letter or as a notation on the check or money order, the Company shall indicate that this payment is submitted pursuant to this Order and shall include the Company’s Federal Identification Number.

#### **SECTION E: Administrative Provisions**


1. The Board may modify, rewrite, or amend the Order with the consent of the Company, for good cause shown by the Company or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, the Company admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. The Company consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Company declares it has received fair and due process under the Administrative Process Act, Code § 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by the Company to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Company shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The Company must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Company shall notify the Director of the SWRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to notify by phone the Director of the SWRO within 24 hours of learning of any condition listed above, which the Company intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. Any plans, reports, schedules or specifications attached hereto or submitted by the Company and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall become effective upon execution by both the Director or his designee and the Company. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Company. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Company from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. The undersigned representative of the Company certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Company to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Company.
14. By its signature below, the Company voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 16 day of March, 2006.

 David R. Payor or Robert Burnley, Director  
Department of Environmental Quality

Cardinal Realty (Virginia), LLC dba Cardinal Stone – Galax Quarry voluntarily agrees to the issuance of this Order.

Name: M. J. O'Brien, Jr.

Title: President

Date: November 15, 2005

State of VIRGINIA

City/County of ROANOKE

The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of Nov., 2005,

by M. J. O'Brien, Jr., who is President of Cardinal Realty (Virginia),  
(name) (title)

LLC dba Cardinal Stone – Galax Quarry on behalf of the Limited Liability Company.

E. F. Salk  
Notary Public

My commission expires: 05-31-09

## APPENDIX A

In order to comply with the provisions of the State Water Control Law and Regulations and the Permit, the Company agrees to implement the following actions by the dates noted below:

1. The Company shall report to the SWRO any unauthorized discharges, unusual or extraordinary discharges, or any noncompliance which may adversely affect state waters or may endanger public health immediately upon discovery (within 24 hours), as outlined in Parts III. G, H, and I of the Permit.
2. The Company shall maintain all temporary control structures that are now in place until completion of permanent control structures as described in Item 3.
3. The Company shall complete construction of permanent control structures and outfalls as described below:

- Modify the sediment basin at Outfall 001\*. March 1, 2006
- Install the sediment basin at Outfall 003\*. December 1, 2005
- Install the sediment basin at Outfall 004\*. December 1, 2005
- Enlarge the sediment basin at Outfall 005\*. June 1, 2006

\* (All basins shall be constructed as described in the attachments submitted to DEQ by letter dated August 26, 2005. All basins shall be constructed with sufficiently impermeable material such that all discharges to the stream are conveyed through an outlet structure. All basins will have sediment cleanout levels identified, either by staff guage, visual means or other measurement device. All outfalls shall be stabilized. All conveyances across the out slopes of fills shall be stabilized by use of appropriately sized and placed rip rap, or by placement in a half pipe or culvert to protect the slopes from scour.)

- Install a detention pond below the stone washing ponds, as an additional control structure. May 1, 2006
- Prepare and seed all disturbed ground for establishment of permanent vegetative cover. June 1, 2006
- Monitor and supplement seeding for a minimum of one year to insure establishment of permanent vegetative cover. June 1, 2007



- Remove sediment from the intermittent channel that receives discharges from Outfalls 003, 004 and 005, in accordance with the plan submitted (removal by hand work only). February 1, 2006
4. The Company shall submit quarterly reports for a period of one year, with reports being due January 10, 2006, April 10, 2006, July 10, 2006 and October 10, 2006. These reports shall provide updates on the progress of construction and reclamation, as stated above, and shall include copies of all inspections (frequency being after each rainfall, as described in the SWPPP). These reports shall document any problems noted and corrections made, as required by the Facility's SWPPP.
  5. All reports to be submitted to the SWRO shall be mailed to the attention of Ruby Scott, Compliance Auditor, P. O. Box 1688, Abingdon, VA 24212.
  6. None of the above items modify or change the Permit and all requirements of the Permit and Registration Statement No. VAG840054 shall remain in effect.